IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

Tr.P(Crl.).No. 94 of 2006()

[C.C.No.2 of 2005 OF HON'BLE SPECIAL JUDGE [CBI/SPE]-II ERNAKULAM]

PETITIONER: ACCUSED

ARUMUGHAN PILLAI ALIAS THAMPI,
S/O.KARUNAKARAN NAIR, AGED 56 YEARS,
RESIDING AT PRAYAGA, EAST KADUNGALLUR,
ALUVA, ERNAKULAM-683 102.

BY ADV. SRI.C.S.MANU

RESPONDENTS: COMPLAINANT

CENTRAL BUREAU OF INVESTIGATION,
KOCHI BRANCH REPRESENTED BY THE SUPERINTENDENT
OF POLICE, CBI, KOCHI BRANCH, ERNAKULAM.

BY SC FOR CBI SRI.SREEKUMAR

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Tr.P.(Crl.) No.94 of 2006

Dated this the 11th day of December 2006

O R D E R

The petitioner is the accused in CC No.2 of 2005 before the Special Judge (CBI/SPE)-II, Ernakulam. Trial against him has started. Two witnesses have already been examined - Pws 1 and 2. The petitioner has rushed to this court with this petition airing an apprehension that the petitioner may not get justice at the hands of the court. Various assertions have been raised in the petition, on the basis of which it is alleged that the petitioner entertained the impression that he may not get justice at the hands of the court.

2. A report of the learned Special Judge was called for. Reports dated 27/11/2006 and 08/12/2006 are available before court wherein the learned Special Judge has reported to the court, what according to him had actually transpired to the court. The learned Standing Counsel for the CBI has also entered appearance and he has raised serious objections against the prayer for transfer.

3. I have gone through the averments of the petition. I have gone through the response of the learned Special Judge. I have heard the learned counsel for the petitioner as also the learned Standing Counsel for the CBI. Having gone through the entire materials, I am not satisfied at all that there is any sufficient ground to instill in the

mind of the petitioner any reasonable apprehension that the may not get justice, if trial which has already commenced were completed in the same court. The objections raised are found to be without any substance. In the course of the trial, exchange of ideas between the learned Judge and the learned counsel cannot normally justifiably instill any apprehension in the mind of the accused facing trial. Sublime discussions and exchange of opinions do and must take place at the bar between the learned counsel and the learned Judge and the mere fact that such exchange of ideas/discussions have taken place cannot justifiably give rise to any apprehension of actual or assumed prejudice. The learned counsel for the petitioner contends that though no personal motive whatsoever is alleged against the learned Judge and the learned Judge may not have any personal prejudice also, the crucial question is not whether there is actual prejudice suffered by the indictee but whether there is reasonable apprehension in his mind about any possible prejudice. The question of law is well stated and there is no doubt on that aspect at all. But having gone through the entire materials, I do not find any justifiable reason which can instill in the mind of the petitioner any reasonable or genuine apprehension that he may not get justice at the hands of the court.

4. It is not necessary to advert in detail to the various circumstances which are pressed into service. In the course of examination of Pws 1 and 2, it would appear that there were

discussions. I find no merit in the contention that the questions put by the learned Judge betrayed his prejudice and anxiety or even a reasonable apprehension of any such prejudice. About the colour of the liquid which was produced before court, about the admissibility of MO1 audio cassette and the possibility of the same having been tampered, about PW2, an official witness who is called upon to witness the trap, having some papers in his personal file (not in the witness stand but in court) which allegedly contained notings about the sequence of events etc, there were disputes and objections. These are not according to me certainly sufficient to instill any real, reasonable or genuine apprehension in the mind of the accused that the learned Special Judge is in any way prejudiced against the petitioner. This transfer petition is in these circumstances dismissed.

5. The learned counsel for the petitioner submits that at the time when the evidence of PW2 was closed, he had not really completed cross-examination of PW2. I need only mention that the petitioner can apply to the learned Special Judge to recall PW2 to further cross-examine and the learned Special Judge must certainly consider that request on merits.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006